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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/625,715  | 07/22/2003  | Joseph Skiba         | 0133-1              | 8129             |
| 25901   | 7590        | 07/26/2004           | EXAMINER            |                  |
| ERNEST D BUFF & ASSOCIATES, LLC<br>245 SOUTH ST<br>MORRISTOWN, NJ 07960 |             |                      | LINDSEY, RODNEY M   |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3765                |                  |

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

YW

|                              |                                      |                                      |  |
|------------------------------|--------------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/625,715 | <b>Applicant(s)</b><br>SKIBA, JOSEPH |  |
|                              | <b>Examiner</b><br>Rodney M. Lindsey | <b>Art Unit</b><br>3765              |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 June 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-9,11 and 12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,11 and 12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>translations 1,2</u> .                 |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of the invention of Group I in the reply filed on June 28, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### **Drawings**

2. The drawings were received on June 28, 2004. These drawings are approved.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 5, 6, 8, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent to Suzuki et al. Note paragraph [0017] of the translation of Suzuki et al. and the helmet shell defined by "organic fiber" with inner and outer surfaces reinforced with a bonded net or mesh of long length fibers (unidirectional fiber sheets) detailed in paragraphs [0012] and [0013]. Suzuki et al. teaches that it is old and well known to form the shell of polycarbonate (see paragraph [0002]) and to provide a shock absorbing inner helmet 2,3 and attachment means 4 in the helmet system (see paragraph [0002]). It would have been obvious to one of ordinary skill in the art at the time of the invention to form the shell of polycarbonate and to provide the system with an inner helmet and attachment means as claimed in view of such

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prior art teaching of Suzuki et al. to achieve the advantage of defining a racing sport helmet.

With respect to claim 5 Suzuki et al. discloses a length of 5cm for the prior art. It would have been obvious to maintain the a length of at least 5cm in the invention of Suzuki et al. since one of ordinary skill in the art at the time of the invention would readily have recognized the goal of Suzuki et al. of employing long length fibers greater than that of the prior art. With respect to claim 6 note the teaching of the use of Styrofoam by Suzuki et al. (see paragraph [0002]). With respect to claim 8 note the strap 4 as taught by Suzuki et al. With respect to claim 11 note the teaching of the use of polycarbonate in Suzuki et al. (see paragraph [0002]). With respect to claim 12 note such teaching in paragraph [0009] of the translation. With respect to claim 9 product-by-process claim 9 even though reciting features in terms of how they are made, e.g. injection molding and molding, is still a product claim, and it is the patentability of the product, not the process steps, which must be determined. Suzuki et al. teach the shell of “organic fiber” regardless of how it is formed and teach the mesh or net of the helmet system regardless of how formed with the shell. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the shell of polycarbonate an “organic fiber” in view of such prior art teaching of Suzuki et al. (see paragraph [0002]) to achieve the expedience of using a readily available helmet material known for withstanding an impact thereto.

2. Claims 3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent to Suzuki et al. in view of Halstead et al. Suzuki et al. do not teach either the helmet shell thickness or inner helmet thickness as claimed. Halstead et al. teach old a shell thickness in the range of 1/16 to 1/4 inch (see column 1, line 67) and an inner helmet thickness in the range of 0.5 to 1 inch (see column 4, lines 8-24). It would have been obvious to provide the shell and inner

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helmet of Suzuki et al. with the respective thickness of the shell and inner helmet of Halstead et al. since one of ordinary skill in the art at the time of the invention would readily have recognized such thickness as adequate starting points for producing a functional helmet system.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent to Suzuki et al. in view of Schiebl et al. Suzuki et al. do not teach forming the net or mesh of para-aramid fibers as claimed. Schiebl et al. teach old the use of such fibers (KEVLAR), see column 3, lines 21-40. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of Suzuki et al. such that the net or mesh or unidirectional fiber sheet is formed of KEVLAR in the manner of Schiebl et al. to achieve the advantage of lightweight and strength.

#### ***Response to Arguments***

4. Applicant's arguments filed June 28, 2004 have been fully considered but they are not persuasive. Contrary to applicant's remarks the prior art references of record and specifically the Japanese patent to Suzuki et al. do teach the invention as now claimed. Applicant's additional remarks are deemed moot in view of the new grounds of rejection. The rejection of claims 1, 3-9, 11 and 12, ably set forth above, is deemed proper in all respects.

#### ***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

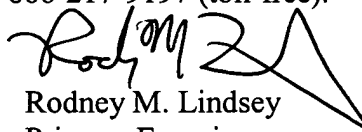
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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

rml